
(2010) 01 JH CK 0074

In the Jharkhand High Court

Case No : Criminal M.P. No. 1207 of 2006

Uma Shanker Singh and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
Forest (Conservation) Act, 1980 — Section 2, 2
Forest Act, 1927 — Section 30, 33

Citation : (2010) 01 JH CK 0074

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajesh Lala and O.P. Pandey, for the Appellant; A.B. Mahato, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The petitioners, who have been made accused, have filed this application u/s 482 Cr.P.C. for quashing the entire criminal proceeding pertaining to G.O.C.R. Case No. 63 of 2004 pending in the Court Sub Divisional Judicial Magistrate at Madhupur in the district of Deoghar as also the order dated 30.11.2004 passed by the Magistrate taking cognizance for the offence u/s 33 of the Indian Forest Act and Section 2 of the Forest (Conservation) Act, 1980.

2. It appears that the informant, who is a Forest Guard, submitted a prosecution report alleging that on 10.2.2004 while he was on patrolling duty in the protected forest, he found the people of Eastern Coalfield Limited (E.C.L.), Chitra were dumping overburden (Soil and Stone) removed from the ECL Mines and Colliery. It is further alleged in the prosecution report that since 1980, the people of ECL have been dumping the said overburden and on being inquired, those people did not disclose their names, rather they said that the work is being done by the order of higher authority and Area Manager. It was alleged that the dumping of stones and soil have been done by encroaching the forest land. On

the basis of the prosecution report, the aforementioned case was instituted for an offence u/s 33 of the Indian Forest Act read with Section 2 of the Forest (Conservation) Act against the petitioners who were holding the post of General Manager, Director (Technical), Superintending Engineers, Managers and retired Managers of Eastern Coalfield Limited. On the basis of the allegations made in the prosecution report the Sub Divisional Judicial Magistrate took cognizance of the offence against the petitioners.

3. Mr. Rajesh Lala, learned Counsel appearing for the petitioners, assailed the impugned order of cognizance and the entire proceeding as being abuse of process of law. Learned Counsel submitted that according to prosecution report, the alleged act of dumping of soils and stones started since 1980 and the alleged dumping work was being done by unknown ECL staffs. Hence, cognizance itself is barred u/s 468 of the Code of Criminal Procedure. Learned Counsel further submitted that the alleged encroachment by dumping overburden from the coal mines was being done by destroying the natural forest. Learned Counsel submitted that no such notification was ever issued after the first notification dated 26.8.1955 which lapsed after 30 years. Learned Counsel submitted that in absence of any notification u/s 30 of the Indian Forest Act declaring any tree or class of trees to be reserved in a protected forest, the provision u/s 33 of the Indian Forest Act cannot be sustained. Learned Counsel further submitted that on the basis of prosecution report, sanction was accorded by the Divisional Forests Officer to lodge a case u/s 33 of the Indian Forest Act, but the Sub Divisional Judicial Magistrate has also taken cognizance u/s 2 of the Forest (Conservation) Act which is wholly without jurisdiction. Lastly learned Counsel submitted that during the relevant period when the offence alleged to have been committed, the petitioners were never posted in the said area. Moreover, some of the petitioners have retired from the services.

4. Learned Counsel appearing for the State, on the other hand, drawn my attention to various paragraphs of the counter affidavit and submitted that the allegations made in the prosecution report cannot be said to be false. As a matter of fact, the persons of colliery are engaged in dumping overburden in the forest land. Learned Counsel submitted that Section 2 of the Forest (Conservation) Act, 1980 applies to all persons irrespective of the nature of ownership and classifications. Hence, there is no bar in taking cognizance of the offence u/s 2 of the said Act.

5. As noticed above, admittedly the persons of ECL colliery have been dumping overburden on the forest land. The question, therefore, that falls for consideration is whether the petitioners against whom prosecution has been initiated are directly involved in the commission of offence, inasmuch some of them have retired from service and it is alleged that the offence was not committed during the tenure of these petitioners. In my considered opinion, all these things cannot be considered in an application u/s 482 of the Code of Criminal Procedure. The appropriate stage to consider the ground raised by the

petitioners is at the time of framing of charge. Having regard to the fact that there is truth in the allegations made in the prosecution report, the criminal proceeding and the order of cognizance cannot be quashed.

6. For the reasons aforesaid, I do not find any merit in this application which is, accordingly, dismissed. As observed above, the petitioners shall be entitled to raise all the points at the time of framing charge against them.